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HOUSE BILL 951

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

MAX COLL

AN ACT

RELATING TO CONSUMER PROTECTION; ESTABLISHING A ONE-YEAR WARRANTY AND OTHER PROTECTIONS FOR CONSUMERS OF ASSISTIVE DEVICES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE. --This act may be cited as the "Assistive Device Lemon Law".

Section 2. DEFINITIONS. --As used in the Assistive Device Lemon Law:

A. "assistive device" means a device, including a demonstrator, that a consumer purchases or accepts transfer of in New Mexico that is used for a major life activity, including manual wheelchairs, motorized wheelchairs, motorized scooters and other aids that enhance the mobility of a person; hearing aids, telephone communication devices for the deaf, assistive

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[bracketed material] = delete

1 listening devices and other aids that enhance a person's ability  
2 to hear; voice-synthesized computer modules, optical scanners,  
3 talking software, Braille printers and other devices that  
4 enhance a sight-impaired person's ability to communicate; and  
5 any other device that enables a person with a disability to  
6 communicate, see, hear or maneuver;

7 B. "collateral costs" means expenses incurred by a  
8 consumer in connection with the repair of a nonconformity,  
9 including the cost of obtaining an alternative assistive device;

10 C. "consumer" means any of the following:

11 (1) the purchaser of an assistive device, if  
12 the assistive device was purchased from a dealer or manufacturer  
13 for purposes other than resale;

14 (2) a person to whom the assistive device is  
15 transferred for purposes other than resale, if the transfer  
16 occurs before the expiration of an express warranty applicable  
17 to the assistive device;

18 (3) the person who can enforce the warranty;  
19 and

20 (4) a person who leases an assistive device  
21 from a lessor pursuant to a written lease;

22 D. "demonstrator" means an assistive device used  
23 primarily for the purpose of demonstration to the public;

24 E. "early termination cost" means an expense or  
25 obligation that an assistive device lessor incurs as a result of

1 both the termination of a written lease before the termination  
2 date set forth in that lease and the return of an assistive  
3 device to a manufacturer and includes a penalty for prepayment  
4 under a finance arrangement;

5 F. "early termination saving" means an expense or  
6 obligation that an assistive device lessor avoids as a result of  
7 both the termination of a written lease before the termination  
8 date set forth in the lease and the return of an assistive  
9 device to a manufacturer. Early termination saving includes an  
10 interest charge that the assistive device lessor would have paid  
11 to finance the assistive device or, if the lessor does not  
12 finance the assistive device, the difference between the total  
13 amount for which the lease obligates the consumer during the  
14 period of the lease term remaining after the early termination  
15 and the present value of that amount at the date of the early  
16 termination;

17 G. "manufacturer" means a person who manufactures or  
18 assembles assistive devices and agents of that person, including  
19 an importer, distributor, factory branch, distributor branch and  
20 any warrantors of the manufacturer's assistive device, but does  
21 not include an assistive device dealer;

22 H. "nonconformity" or "nonconforming" means a  
23 condition or defect that substantially impairs the use, value or  
24 safety of an assistive device and that is covered by an express  
25 warranty applicable to the assistive device or to a component of

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[bracketed material] = delete

1 the assistive device, but does not include a condition or defect  
2 that is the result of abuse, neglect or unauthorized  
3 modification or alteration of the assistive device by a  
4 consumer; and

5 I. "reasonable attempt to repair" means, within the  
6 terms of an express warranty applicable to a new assistive  
7 device:

8 (1) any nonconformity within the warranty that  
9 is subject to repair by the manufacturer, the manufacturer's  
10 authorized dealer or a lessor for at least four times and a  
11 nonconformity continues; or

12 (2) the assistive device is out of service for  
13 an aggregate of at least thirty cumulative days because of  
14 warranty nonconformity.

15 Section 3. OBLIGATIONS AND INTERESTS. --

16 A. A manufacturer who sells an assistive device to a  
17 consumer, either directly or through a dealer, shall furnish the  
18 consumer with an express warranty for the assistive device. The  
19 duration of the express warranty shall be not less than one year  
20 after first delivery of the assistive device to the consumer.  
21 In the absence of a written warranty from the manufacturer, the  
22 manufacturer shall be deemed to have expressly warranted to the  
23 consumer of an assistive device that for a period of one year  
24 from the date of first delivery to the consumer, the assistive  
25 device will be free from any nonconformity.

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1           B. If a new assistive device does not conform to an  
2 applicable express warranty and the consumer reports the  
3 nonconformity to the manufacturer, dealer or lessor and makes  
4 the assistive device available for repair during the warranty  
5 period, the nonconformity shall be repaired at no charge to the  
6 consumer.

7           C. If, after a reasonable attempt to repair, the  
8 nonconformity is not repaired, the manufacturer, at the  
9 direction of the consumer, shall:

10                   (1) accept return of the assistive device and  
11 replace it with a comparable new assistive device and refund any  
12 collateral costs within thirty days;

13                   (2) accept return of the assistive device and  
14 refund to the consumer and to any holder of a perfected security  
15 interest in the consumer's assistive device, as their interest  
16 may appear, the full purchase price plus any finance charge  
17 amount paid by the consumer at the point of sale and collateral  
18 costs, less a reasonable allowance for use; or

19                   (3) if the consumer was a lessee, accept return  
20 of the assistive device, refund to the lessor and to any holder  
21 of a perfected security interest in the assistive device, as  
22 their interest may appear, the current value of the written  
23 lease and refund to the consumer the amount that the consumer  
24 paid pursuant to the written lease plus any collateral costs,  
25 less a reasonable allowance for use.

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1           D. The current value of the written lease equals the  
2 total amount for which that lease obligates the consumer during  
3 the period of the lease remaining after its early termination,  
4 plus the assistive device dealer's early termination costs and  
5 the value of the assistive device at the lease expiration date  
6 if the lease sets forth that value, less the assistive device  
7 lessor's early termination savings.

8           E. A reasonable allowance for use may be charged to  
9 the consumer based on the number of days that the consumer used  
10 the assistive device before the consumer first reported the  
11 nonconformity to the manufacturer, dealer or lessor.

12           F. To receive a comparable new assistive device or a  
13 refund due pursuant to Paragraph (1) or (2) of Subsection C of  
14 this section, a consumer shall offer to transfer possession of  
15 the nonconforming assistive device to the manufacturer. No  
16 later than thirty days after the offer, the manufacturer shall  
17 provide the consumer with a comparable new assistive device or a  
18 refund. When the manufacturer provides the new assistive device  
19 or refund, the consumer shall return the nonconforming assistive  
20 device to the manufacturer, along with any endorsements  
21 necessary to transfer real possession to the manufacturer.

22           G. To receive a refund due pursuant to Paragraph (3)  
23 of Subsection C of this section, a lessor shall offer to  
24 transfer possession of the nonconforming assistive device to the  
25 manufacturer. No later than thirty days after the offer, the

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1 manufacturer shall provide the refund to the lessor. When the  
2 manufacturer provides the refund, the lessor shall provide to  
3 the manufacturer any endorsements necessary to transfer legal  
4 possession to the manufacturer.

5 H. No person shall enforce the lease against the  
6 consumer after the consumer receives a refund due pursuant to  
7 Paragraph (3) of Subsection C of this section.

8 I. No assistive device returned by a consumer or  
9 lessor in this or any other state because of a nonconformity  
10 shall be resold or released in this state unless full disclosure  
11 of the reasons for return is made to any prospective buyer or  
12 lessee.

13 Section 4. ATTORNEY GENERAL REGULATIONS--ARBITRATION.--The  
14 attorney general may adopt and promulgate regulations necessary  
15 to carry out the provisions of the Assistive Device Lemon Law,  
16 including regulations concerning arbitration of disputes arising  
17 from nonconforming assistive devices and failures to comply with  
18 the Assistive Device Lemon Law.

19 Section 5. CONSUMER RIGHTS--ACTIONS--TREBLE DAMAGES.--

20 A. This section shall not be construed to limit  
21 rights and remedies available to a consumer under any other law.

22 B. In addition to pursuing any other remedy, a  
23 consumer may bring an action to recover actual damages or the  
24 sum of one hundred dollars (\$100), whichever is greater. Where  
25 the trier of fact finds that the party charged with a violation

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1 of the Assistive Device Lemon Law has willfully engaged in the  
2 violation, the court may award up to three times actual damages  
3 or three hundred dollars (\$300), whichever is greater, to the  
4 party complaining of the violation.

5 C. The court shall award attorney fees and costs to  
6 the party complaining of a violation of the Assistive Device  
7 Lemon Law if he prevails. The court shall award attorney fees  
8 and costs to the party charged with a violation of the Assistive  
9 Device Lemon Law if it finds that the party complaining of the  
10 violation brought an action that was groundless.

11 D. In any class action filed under this section, the  
12 court may award damages to the named plaintiffs as provided in  
13 Subsection B of this section and may award members of the class  
14 such actual damages as were suffered by each member of the class  
15 as a result of a violation of the Assistive Device Lemon Law.

**State of New Mexico**  
**House of Representatives**

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**FORTY-THIRD LEGISLATURE**  
**FIRST SESSION, 1997**

February 27, 1997

Mr. Speaker:

Your CONSUMER AND PUBLIC AFFAIRS COMMITTEE, to  
whom has been referred

HOUSE BILL 951

has had it under consideration and reports same with  
recommendation that it DO PASS, amended as follows:

1. On page 7, between lines 12 and 13, insert the  
following new section:

"Section 4. EXEMPTION FROM ACT. -- The Assistive Device Lemon  
Law does not apply to an assistive device that has been provided  
to a person free of charge or to a person when he provides an  
assistive device to a person free of charge."

**FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997**

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2. Renumber the succeeding sections accordingly.

Respectfully submitted,

\_\_\_\_\_  
Gary King, Chairman

Adopted \_\_\_\_\_

Not Adopted \_\_\_\_\_

(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 7 For 0 Against

Yes: 7

Excused: Ri os, 0Vaughn, Vi gil

Absent: None

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FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

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FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

March 21, 1997

Mr. President:

Your PUBLIC AFFAIRS COMMITTEE, to whom has been referred

HOUSE BILL 951, as amended

has had it under consideration and reports same with recommendation that it DO PASS.

Respectfully submitted,

\_\_\_\_\_  
Shannon Robinson, Chairman

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

**FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997**

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(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 4 For 1 Against

Yes: 4

No: Adair

Excused: Boitano, Ingle, Vernon, Rodarte

Absent: None

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